



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/150072

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**PRELIMINARY RECITALS**

Pursuant to a petition filed June 18, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on August 06, 2013, at Port Washington, Wisconsin.

The issue remaining for the determination is whether this appeal is timely.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Ozaukee County.
2. Petitioner was sent a Notice of Decision dated April 30, 2013 that informed her that she would have a BadgerCare+ premium effective May 1, 2013 in the amount of \$146.00 per month. This followed an April 2013 review.

3. The May 17<sup>th</sup> notice was sent to Petitioner at the above address. It does contain appeal instructions and notes the appeal deadline to be June 17, 2013. June 17, 2013 was a Monday.
4. This appeal was filed with the Division of Hearings and Appeals via facsimile on Tuesday, June 18, 2013 at 3:20 PM.

### **DISCUSSION**

In order for the Division of Hearings and Appeals to have authority to make a determination on the merits of a matter it must have authority to do so. It does not have authority where an appeal is untimely. A timely hearing request concerning Medical Assistance matters must be filed within 45 days of the effective date of the agency decision. §49.45(5)(a), *Wis. Stats.*

In preparing this case for decision it became apparent that this appeal was not filed on time leaving the Division of Hearings and Appeals without legal authority to make a determination on the merits of this matter.

I will, however, note three things:

First, the agency determined Petitioner's income to be \$1305.32 in earned income and child support in the amount of \$1944.87 based upon a three month average for a total of \$3250.19. Petitioner contends that her income fluctuates. Nonetheless, the child support figure is based on actual receipts over three months and her total wages as of the end of March 2013 for the calendar year were \$3916.55 or \$1305.51 – within a few cents of the agency calculation based on three paystubs received by Petitioner just before the review. Based on this I would not change the premium determination.

Second, the agency did not give timely notice as to the May 1, 2013 premium increase. While the Division of Hearings and Appeals is without legal authority here I am unaware of law or policy preventing the agency from adjusting the effective date of the premium to June 1, 2013.

Third, Petitioner did submit new information to the Division of Hearings and Appeals for the hearing. She did not send it to the agency so it was forwarded to the agency by the Division of Hearings and Appeals. Based on that information the agency adjusted Petitioner's premium to \$120.00 effective November 1, 2013. A new Notice of Decision was issued. Petitioner may file a new appeal concerning the new premium amount.

### **CONCLUSIONS OF LAW**

That Petitioner's appeal was not timely filed thus the Division of Hearings and Appeals has no legal authority to make a decision on the merits of the May 1, 2013 BadgerCare+ premium increase.

**THEREFORE, it is**

### **ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 24th day of September, 2013

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 24, 2013.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability